

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

SYMBOLGY INNOVATIONS, LLC

Plaintiff,

v.

VALVE CORPORATION,
GEARBOX SOFTWARE, LLC
Defendant.

Civil Action No. 2:23-cv-419-JRG-RSP

JURY TRIAL DEMANDED

**DEFENDANT VALVE CORPORATION'S SUR-SUR-REPLY
IN SUPPORT OF ITS MOTION TO DISMISS UNDER FEDERAL
RULE OF CIVIL PROCEDURE 12(B)(3) FOR IMPROPER VENUE**

Valve files this response to Plaintiffs' corrected sur-reply (Dkt. 75) to correct several material misrepresentations made in Plaintiffs' brief.

First, Plaintiffs state that Valve filed "a barrage of motions on this Court without complying with Rule 7(h)." Dkt. 75 at 1 n. 1. Yet counsel for Plaintiffs stated in an email "we confirm via this email that Valve has met and conferred under Rule 7(h), so Valve can proceed to file its motions opposed. Plaintiffs are not going to claim lack of a meet and confer as an opposition to any of these motions." Ex. 1 (Apr. 4, 2024, Email from R. Garteiser to Counsel for Valve).

Second, Plaintiffs state, "Valve's HTC Vive VR headset" "does overlap completely with the Display Technology accused instrumentalities." Dkt. 75 at 1. This cannot be the case. The HTC Vive VR headset was released in 2016¹, a year after the Display Technologies lawsuit was

¹ Valve does not manufacture, sell, or distribute the HTC Vive VR. *See* Ex. 2 (listing the manufacturer as HTC).

filed. *Compare* Ex. 2 (release date announcement of HTC Vive headset); *with Display Technologies, LLC v. Valve Corporation*, 2-15-cv-00999, Dkt. 1 (E.D. Tex. June 8, 2015).

Third, Plaintiffs argue “Valve told a court in the Western District of Washington that a non-signatory was bound by the GSALA by a later assignment.” Dkt. 75 at 4. This misrepresents Valve’s position. Valve alleged in the Washington case that Rothschild-controlled entity RBDS was bound by the GSALA “as if it was a party hereto” under § 7.2 of the agreement because the patent RBDS asserted against Valve was listed as a licensed patent under the GSALA. Here in the Rothchild plaintiffs’ EDTX cases against Valve, there is no dispute that none of the Asserted Patents are listed in the GSALA. Therefore, under the plain language of § 7.2, Symbology, QTI, and SPIS are not “part[ies]” to the GSALA. Plaintiffs’ sur-reply demonstrates only that Valve’s Washington case arises out of the GSALA while Plaintiffs’ Texas cases do not.

Fourth, Plaintiffs include an excerpt of Dkt. 66-2 (an email from R. Garteiser to counsel for Valve) in their sur-reply and argue “[t]he entire context [of the email] was about the Global Settlement and License Agreement.” Dkt. 75 at 5. Plaintiffs excerpted only the portion that references Valve’s hypothetical license defense. Plaintiffs omit the rest of the email, which references a stay of litigation, the parties’ other motions, and Plaintiffs’ demand that Valve waive its right to seek fees. Dkt. 66-2.

Fifth, Plaintiffs purport to quote a sentence from Valve’s reply. Dkt 75 at 5 (“Valve’s Reply argues that plaintiff contradicts itself by saying the ‘GSALA is the same nexus of operative facts yet claiming the Patents-in-Suit now were not licensed under the GSALA’”). Valve did not make this quoted statement in its Reply brief (Dkt. 66), and the statement does not appear in any of Valve’s briefing on the motion to dismiss.

Dated: May 16, 2024

Respectfully submitted,

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